



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

August 29, 2006

**CERTIFIED MAIL NO. 7003 3110 0006 2000 8410**  
**RETURN RECEIPT REQUESTED**

In Reply: AIR-5  
Refer To: Docket No. R9-2006-17

Mr. Richard M. Hayslip  
Manager Environmental, Land, and Risk Management  
Salt River Project  
P.O. Box 52025  
Phoenix, Arizona 85072

Dear Mr. Hayslip:

Enclosed is a copy of a Finding and Notice of Violation ("NOV") that the United States Environmental Protection Agency ("EPA") is issuing to Salt River Project ("SRP") pursuant to Section 113(a) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a). The NOV notifies SRP of EPA's finding that SRP has been and is in violation of the Act and the federally-approved and federally-enforceable State Implementation Plan for Maricopa County at the Santan Generating Station located in Gilbert, Arizona (the "facility").

You should be aware that Section 113(a) of the Act provides that 30 days after the issuance of the NOV, EPA may issue an Order requiring compliance with the requirements of the SIP, issue an Order assessing a civil administrative penalty, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, Section 113(c) of the Act provides for criminal penalties in certain cases.

Upon a finding of adequate evidence of a continuing violation, EPA may place the Santan Generating Station on the List of Violating Facilities. See Section 306 of the Act and the regulations promulgated in 40 C.F.R. Part 32. Such facility would be declared ineligible for participation in any federal contract, grant, loan, or subagreement thereunder.

If you wish to discuss the NOV, you may request a conference with EPA. The conference will afford SRP an opportunity to present information bearing on the finding of violation, the nature of the violation, any efforts you have taken to achieve compliance, and the steps you propose to take to achieve compliance.

Letter to Mr. Hayslip  
Page 2

Please have SRP's attorney contact Allan Zabel, Office of regional Counsel, at (415) 972-3902, to request a conference. Such request should be made as soon as possible, but in any event no later than 10 business days after receipt of this letter. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Deborah Jordan", with a stylized, flowing script.

Deborah Jordan  
Director, Air Division

Enclosure

cc: Mr. Robert J. Kard, MCAQD  
Ms. Nancy Wrona, ADEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

August 29, 2006

Mr. Robert J. Kard  
Director, Maricopa County Air Quality Department  
1001 North Central Avenue  
Phoenix, AZ 85004

Dear Mr. Kard:

Enclosed for your information is a copy of a Notice of Violation ("NOV") issued by the United States Environmental Protection Agency ("EPA") to Salt River Project ("SRP"), pursuant to Section 113(a) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a). The NOV notifies SRP of EPA's finding that SRP has been in violation of the Act and the federally-approved and federally-enforceable Arizona State Implementation Plan for Maricopa County at the Santan Generating Station located in Gilbert, Arizona (the "facility").

Section 113(a)(1) of the Act, as amended (42 U.S.C. § 7413(a)(1)), provides, in part:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding.

The Act further provides that after 30 days from the date of issuance of this NOV, EPA may determine if any action will be taken pursuant to Section 113 of the Act, 42 U.S.C. § 7413(a)(1).

The NOV informs the facility that a conference on the matter may be arranged by making a request to this office within 10 business days after receipt of the NOV. Please contact Mark Sims of the Enforcement Office at (415) 972-3965 if you have any questions regarding the NOV.

Sincerely,

Deborah Jordan  
Director, Air Division

cc: Nancy Wrona (ADEQ)

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

In the Matter of:	)	
	)	
Salt River Project	)	Docket No. R9-2006-17
Santan Generating Station	)	FINDING AND
	)	NOTICE OF VIOLATION
Proceeding under Section 113(a)	)	
of the Clean Air Act,	)	
42 U.S.C. § 7413(a)	)	
_____	)	

STATUTORY AND REGULATORY AUTHORITY

1. This Finding and Notice of Violation ("NOV") is issued to Salt River Project ("SRP") for violations at the electrical generating facility it owns and operates in Gilbert, Arizona. This facility is known as the Santan Generating Station ("Santan" or the "Facility").

2. The Administrator of the Environmental Protection Agency ("EPA"), pursuant to authority under Section 109 of the Clean Air Act (the "Act"), 42 U.S.C. §7409, promulgated National Ambient Air Quality Standards ("NAAQS") for certain criteria pollutants, including PM<sub>10</sub>. 40 C.F.R. § 50.6.

3. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every State. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The PM<sub>10</sub> attainment status designations for the Arizona AQCRs are listed at 40 C.F.R. § 81.303.

4. The Maricopa County Air Quality Department ("MCAQD")<sup>1</sup> has primary jurisdiction over the Phoenix Planning Area, which has been designated as a serious nonattainment area for the NAAQS for PM<sub>10</sub>. 40 C.F.R. § 81.303.

5. Section 110(a)(2)(c) of the Act, 42 U.S.C. § 7410(a)(2)(c), requires that each state implementation plan ("SIP") include a permit program to regulate the construction and modification of any stationary source, and for nonattainment areas, must also include the requirements of Part D of Title I of the Act. Part D of the Act, 42 U.S.C. §§ 7501-7515, and its implementing regulations, 40 C.F.R. § 51.165, set out the requirements for SIPs for nonattainment areas in order to ensure that those areas will attain the NAAQS on or before the attainment date. For stationary sources not subject to Part D requirements, the SIP program must meet the requirements of 40 C.F.R. §§ 51.160-164.

6. MCAQD Rule 21 (Procedures for Obtaining Installation Permits) is part of the federally-approved and enforceable SIP pursuant to 42 U.S.C. § 7410 and Part D of the Act. See 53 Fed. Reg. 30,224 (August 10, 1988).

7. MCAQD Rule 21.D. requires installation permits to be issued in compliance with and contain requirements of Arizona Department of Environmental Quality ("ADEQ") Articles R9-3-301 through R9-3-305 and R9-3-307. R9-3-302 requires installation permits for sources located in a nonattainment area. MCAQD Rule 21.D. requires, in part, that a major source or major alteration offset nonattainment pollutant emission increases on the startup date of the major source or major alteration.

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<sup>1</sup> In November 2004, the Maricopa County Air Quality Department was created and separated from the Maricopa County Environmental Services Department. This Finding and Notice of Violation will refer to these two agencies collectively as "MCAQD."

8. MCAQD Rule 200 requires an existing or modified major source to obtain a Title V operating permit that contains all requirements applicable to that source. EPA granted MCAQD Title V program interim approval on November 29, 1996 (61 Fed. Reg. 55910; October 30, 1996) and full approval on November 30, 2001 (66 Fed. Reg. 63175; December 5, 2001).

9. MCAQD issues combined installation and Title V permits under SIP authority and Title V authority, respectively.

#### FINDINGS OF FACT

9. The Facility consisted of four combined-cycle, natural gas-fired turbines and related equipment capable of producing approximately 360 megawatts ("MW") of electrical power. On February 10, 2003, MCAQD issued to SRP a combined installation and Title V permit, V95-008, Significant Revision S01-014 ("Combined Permit") for the modification of the Facility. The modification included two new combined-cycle electrical generating units and associated equipment (Units S-5A, S-5B and S-6A, Cooling Towers CT-5 and CT-6) capable of producing approximately 825 MW of additional power. This modification is known as the Santan Expansion Project ("SEP").

10. SRP's Combined Permit contains a condition requiring all road paving particulate matter offsets provided by SRP for the SEP to comply with a road paving offset generating rule that must be incorporated into the SIP for the Phoenix Planning Area prior to commencement of operation of the SEP. This permit condition, Condition 18.C.7., states, "This condition is applicable if the Permittee is relying on the use of PM<sub>10</sub> offsets from road paving to meet the offset requirements of this permit. Prior to commencement of operation of Units S-5A, S-5B and S-6A, Cooling Towers CT-5 and

CT-6 and 2 Emergency Diesel Engines (310 hp and 410 hp), all particulate matter offsets required for this equipment shall be recalculated and be approvable pursuant to a rule, which will have been by that time incorporated into the state implementation plan for the Phoenix Planning Area, governing the generation of such offsets from the paving of roads which were previously unpaved. This rule is to be developed by the Maricopa County Environmental Services Department and submitted to the U.S. Environmental Protection Agency for inclusion into the state implementation plan for the Phoenix Planning Area.”

11. To date, an offset generating rule has not been incorporated into the SIP for the Phoenix Planning Area.
12. On or about January 31, 2005, SRP commenced operation of Unit S-5A at Santan.
13. On or about February 5, 2005 SRP commenced operation of Unit S-5B at Santan.
14. On or about December 16, 2005, SRP commenced operation of Unit S-6A at Santan.

#### FINDING OF VIOLATION

15. SRP commenced operation of Santan Unit S5-A in violation of its Combined Permit and, therefore, in violation of the SIP and Title V.<sup>2</sup>

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<sup>2</sup> On October 8, 2003, SRP submitted an application for what it called a “Minor Permit Revision” to MCAQD regarding particulate matter offset provision 18.C.7 of the Combined Permit. MCAQD subsequently revised the Combined Permit (“Minor Modification 10-27-03-01”) to substantially change the offset requirements for the SEP. Minor Permit Revision 10-27-03-01 is not legally valid because this change attempts to relax an applicable requirement of the Clean Air Act and constitutes a Significant Revision to the Title V permit that did not go through public review and comment.



16. SRP commenced operation of Santan Unit S5-B in violation of its Combined Permit and, therefore, in violation of the SIP and Title V.

17. SRP commenced operation of Santan Unit S6-A in violation of its Combined Permit and, therefore, in violation of the SIP and Title V.

#### ENFORCEMENT

18. Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this notice of violation ("NOV"), EPA may, without regard to the period of violation:

- issue an order requiring compliance with the requirements of the SIP or permit, or
- issue an administrative penalty order pursuant to Section 113(d) of the Act for civil administrative penalties up to \$32,500 per day of violation, or
- bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$32,500 per day for each violation.

42 U.S.C. § 7413(a)(1), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, & 40 C.F.R. § 19. Furthermore, for any person who knowingly violates any SIP or permit requirement more than 30 days after the date of issuance of a NOV, Section 113(c) of the Act provides for criminal penalties, imprisonment, or both. 42 U.S.C. § 7413(c).

In addition, under Section 306(a) of the Act, the regulations promulgated thereunder (40 C.F.R. Part 32), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violation of the Act may result in the Facility being declared ineligible for participation in any federal contract, grant, or loan.



### PENALTY ASSESSMENT CRITERIA

19. Section 113(e)(1) of the Act states that the Administrator or a court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. 42 U.S.C. § 7413(e)(1).

Section 113(e)(2) of the Act allows the Administrator or a court to assess a penalty for each day of violation. 42 U.S.C. § 7413(e)(2). For the purpose of determining the number of days of violation, where EPA makes a prima facie showing that the conduct or events giving rise to a violation are likely to have continued or recurred past the date of the issuance of a NOV, EPA shall presume the days of violation to include the date of issuance of the NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

### OPPORTUNITY FOR CONFERENCE


20. SRP may, upon request, arrange to have a conference with EPA to discuss this matter. A conference would enable SRP to present evidence bearing on the finding

of violation, the nature of the violation, and any efforts that it may have taken or proposes to take to achieve compliance. If SRP wishes to take advantage of this opportunity, it must make a request for a conference within ten (10) days of receipt of this NOV. SRP, if it chooses to request a conference, may choose to be represented by counsel at the conference. Any request for a conference or other inquiries concerning the NOV should be made in writing to:

Allan Zabel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street (ORC-2)  
San Francisco, CA 94105-3901  
(415) 972-3902

Date

8-29-06

  
\_\_\_\_\_  
Deborah Jordan  
Director, Air Division  
EPA Region 9